

IN THE MICHIGAN SUPREME COURT

In re Smith Minors

Supreme Court Case No. 161525

Court of Appeals Case No. 351095

Kalamazoo County Circuit Court

Case No. 18-000053-NA

Filed under AO 2019-6

**APPELLANT-FATHER'S APPENDIX TO
SUPPLEMENTAL BRIEF**

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TABLE OF CONTENTS

	Page
Relevant Docket Entries of the Trial Court and COA.....	3a
Transcript Excerpts 1/24/2018	4a
Transcript Excerpts 3/28/2018	10a
Transcript Excerpts 4/23/2018	20a
Transcript Excerpts 8/30/2018	23a
Transcript Excerpts 11/27/2018	27a
Transcript Excerpts 7/2/2019	29a
Transcript Excerpts 9/13/2019 TPR	31a
Transcript Excerpts 9/13/2019 PPH.....	37a
Trial Court Order Terminating Parental Rights 9/13/2019.....	39a
COA Per Curiam Opinion 4/30/2020	42a
COA Dissenting Opinion 4/30/2020.....	47a

Relevant Docket Entries of the Trial Court and Court of Appeals

**RELEVANT DOCKET ENTRIES OF THE TRIAL COURT AND
COURT OF APPEALS**

1/24/2018	Preliminary Hearing
3/28/2018	Adjudication Hearing
4/23/2018	Disposition Hearing
8/30/2018	Dispositional Review Hearing
11/27/2018	Dispositional Review Hearing
1/24/2019	Permanency Planning Hearing
4/29/2019	Dispositional Review Hearing
7/2/2019	Termination Hearing
7/19/2019	Dispositional Review Hearing
8/8/2019	Continued Termination Hearing
8/8/2019	Permanency Planning Hearing
9/13/2019	Final Termination Hearing
9/13/2019	Permanency Planning Hearing
9/13/2019	Order Terminating Parental Rights of Brian Smith
9/26/2019	Appellant-Father Requested Appellate Counsel
10/15/2019	Appellate Counsel Appointed
10/15/2019	Claim of Appeal
4/30/2020	Court of Appeals Per Curiam Opinion Issued
4/30/2020	Court of Appeals Dissenting Opinion Issued

STATE OF MICHIGAN
9TH JUDICIAL CIRCUIT COURT - FAMILY DIVISION
FOR THE COUNTY OF KALAMAZOO

IN THE MATTER OF BRIANNA SMITH (01/16/2008)
and BRIAN SMITH JR. (4/23/11)

Case No.: 2018-0053-NA

PRELIMINARY HEARING

BEFORE REFEREE DENISE E. NOBLE

Kalamazoo, Michigan - Wednesday, January 24, 2018

APPEARANCES:

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AUDIO/VIDEO RECORDED

TRANSCRIBED BY: Ms. Rebecca S. Quarry, CER 8376
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1 and the heat was there as well because it is gas.

2 MS. PRENTICE-SAO: Okay. And did you start moving
3 your stuff yesterday?

4 MS. GANN-SMITH: Well we pretty much finished
5 moving what we had left today.

6 MS. PRENTICE-SAO: Yeah.

7 MS. GANN-SMITH: And then we started moving stuff
8 weeks ago --

9 MS. PRENTICE-SAO: Okay.

10 MS. GANN-SMITH: -- into storage.

11 MS. PRENTICE-SAO: All right. And where are you
12 going to reside?

13 MS. GANN-SMITH: At the hotel for a little bit
14 until we get our income tax, which should be by the end of
15 next week or the week after.

16 MS. PRENTICE-SAO: Which hotel?

17 MS. GANN-SMITH: Quality inn.

18 MS. PRENTICE-SAO: And was there recently a tragedy
19 in your family?

20 MS. GANN-SMITH: Yes.

21 MS. PRENTICE-SAO: What happened? This where your
22 oldest daughter who is 23 recently died?

23 MS. GANN-SMITH: 22.

24 MS. PRENTICE-SAO: 22. When did she pass?

25 MS. GANN-SMITH: July.

1 MS. PRENTICE-SAO: And did you have to pay \$3,000
2 for a cremation?

3 MS. GANN-SMITH: Yes.

4 MS. PRENTICE-SAO: And did that cause a financial
5 hardship for the family?

6 MS. GANN-SMITH: Yes.

7 MS. PRENTICE-SAO: And did that cause you to get
8 behind in your rent?

9 MS. GANN-SMITH: Yes.

10 MS. PRENTICE-SAO: I have no further questions.

11 THE COURT: Attorney Johnson, any questions of the
12 mother?

13 MS. JOHNSON: I am sorry to hear about that
14 situation. I don't have any questions.

15 THE COURT: Attorney Gleason?

16 MS. GLEASON: I just have a couple questions, Ms.
17 Smith.

18 Were there -- was there some police involvement
19 regarding an investigation on 11/17/2017 and 10/12/2017
20 regarding domestic violence?

21 MS. GANN-SMITH: If there is a police report than
22 yes there is.

23 MS. GLEASON: All right.

24 MS. GANN-SMITH: I really do not recall.

25 MS. GLEASON: And those two domestic disputes

1 your daughter and certainly that can get people behind on
2 rent, the Court recognizes that. Probably as well as the
3 electric bill, I am guessing, but the parents now are
4 residing in a hotel. They refuse to cooperate with the CPS
5 investigation and request an inspection of the home and drug
6 screens. That is not an requirement.

7 Then we have the amendment that deal with not
8 regularly attending school, hungry, unkempt and that affects
9 the education progress. Those statements come through the
10 school officials.

11 As a whole, I don't know how many of these would
12 hold up on their own, but as a whole I believe that there is
13 minimal amount of probable cause to authorize the petition
14 because of the different levels of involvement in the
15 allegations.

16 If that goes to trial we will see how that happens
17 then. It is certainly is a different burden of proof then,
18 but the Court will authorize the petition on probable cause
19 today.

20 MR. SMITH: (Inaudible).

21 THE COURT: And Ms. Sayre, what is your
22 recommendation for placement of the children? It looks like
23 the Department is requesting a removal.

24 MS. SAYRE: Emergency removal was --

25 THE COURT: Last night.

1 support removal at this time. The police were at the home
2 apparently in October and November although those police
3 reports were not shared with the -- with Attorney Bradfield
4 or myself -- the police apparently did not contact DHHS at
5 those incidences.

6 The case worker did not testify that there were
7 investigations in October and November.

8 The school concerns did not rise to the level of
9 contacting DHHS and we know they are mandated reporters. The
10 family is going through a lot of struggles. I think that
11 having to sit her and talk about her deceased daughter can
12 cause any mother to be extremely upset today. So I would ask
13 the Court to leave the children with the parents.

14 THE COURT: And Attorney Bradfield?

15 MS. BRADFIELD: I would say the exact same thing,
16 your Honor, as Attorney Prentice-Sao.

17 THE COURT: Well this is in fact a difficult
18 decision. An emergency order last night removed the children
19 and the Court has to address that today one way or another.

20 The probable cause proofs on this are minimal based
21 on what we have today. I don't -- I don't know what will
22 happen in a trial to be honest. It is clear that the family
23 has fallen on some hard times which resulted in the eviction
24 and the electricity and maybe even some depression on behalf
25 of the mother from the loss of her child and that is

1 affecting whatever else is going on in the home too.

2 On the other hand the children are at a place that
3 they know, that they have been before and that is a
4 comfortable place for them, it is safe place for them. It is
5 stable place for them --

6 MR. SMITH: (Inaudible).

7 THE COURT: -- right now.

8 So I don't anticipate if the parents are testing
9 clean, they get the housing the father has mentioned in terms
10 of getting housing and not being at the hotel for very long -
11 - that this case will stay open for very long.

12 For right now what I am going to do is leave the
13 children in the care of the Department so they can be stable
14 for right now while the parents are able to collect
15 themselves over the next 30 days. When we come at the
16 pretrial I think maybe we can take a look at returning them
17 then. Hopefully we will have some clean screens under our
18 belts, the parents will have housing again, the kids can come
19 home, but right now they seem to be in a place that they know
20 that is stable.

21 MR. SMITH: (Inaudible).

22 THE COURT: I am going to allow liberal parenting
23 time as long as the parents are testing clears. I don't
24 think that's a -- it's a problem for unsupervised. There may
25 have been some police calls on domestic violence, but there

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9TH JUDICIAL CIRCUIT COURT - FAMILY DIVISION
FOR THE COUNTY OF KALAMAZOO

IN THE MATTER OF BRIANNA SMITH (01/16/2008)
and BRIAN SMITH JR. (4/23/11)

Case No.: 2018-0053-NA

ADJUDICATION

BEFORE THE HONORABLE G. SCOTT PIERANGELI
Kalamazoo, Michigan - Thursday, March 28, 2018

APPEARANCES:

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BRIANNA SMITH

(At 9:38 a.m., sworn as a witness, testified as follows)

DIRECT EXAMINATION

BY MR. JOHNSON:

Q. Okay. So Brianna, where do you go to school right now?

A. Bloomingdale Elementary.

Q. Okay. And where are you living right now?

A. In Bloomingdale.

Q. And who are you living with?

A. Sandy and her husband and her -- and Mac and the two little babies and J.C.

Q. Okay. And before that where did you live?

A. With my parents.

Q. Okay. And what kind of place was it that you lived in? Was it a house or --

A. In an apartment.

Q. It was an apartment. And who lived in that apartment with you?

A. My mom, my dad, my sister, my brother and all the cat -- two of the cats and the three kittens.

Q. Okay. And what is your brother's name?

A. Brian.

Q. And how old is Brian?

A. Six.

- 1 A. A bit unkempt.
- 2 Q. Were they -- was she on time?
- 3 A. No.
- 4 Q. Was that a regular thing?
- 5 A. Yes, I do have some paperwork stating how often they were
- 6 tardy and their attendance ratings and such.
- 7 Q. How often was Brianna tardy?
- 8 A. From Sept -- from September 11th through January 29th she was
- 9 tardy eleven times.
- 10 Q. And in addition to the tardies were there ever times where
- 11 she was just absent for the whole day without explanation?
- 12 A. Yes, sir.
- 13 Q. How many times for that?
- 14 A. We have 22 absences.
- 15 Q. That is in addition to the tardies?
- 16 A. Correct.
- 17 Q. And those absences are unexcused or excused?
- 18 A. Out of those I have five that are excused.
- 19 Q. Five excused out of 22?
- 20 A. Yes, sir.
- 21 Q. So 17 unexcused?
- 22 A. Yes. I have an attendance rating of 74 percent.
- 23 Q. What is an attendance rating?
- 24 A. An attendance rating is the amount of time that you are in
- 25 your seat at school. So she was present and in her seat 74

1 percent of the time.

2 Q. And is that something that could have an impact on a child's
3 ability to learn?

4 A. In my opinion, yes.

5 Q. What about Brian Jr.? How would he appear when he showed up?

6 A. Very similar to Brianna.

7 Q. So similar clothes days in a row, unkempt, is that accurate?

8 A. Yes, sir.

9 Q. What about this attendance?

10 A. For Brian I have him at school 75 percent of the time and I
11 have 15 tardies for him.

12 Q. Did you ever get an explanation from anyone as to why the
13 children were tardy?

14 A. No, sir.

15 Q. Do you, at your school, provide free breakfasts or lunches?

16 A. Yes, sir.

17 Q. Did the children ever arrive in time for the free breakfast?

18 A. Yes, they did.

19 Q. Was that an unusual thing or a usual thing?

20 A. Upon looking at the attendance rate with them being there 74
21 percent of the time each day they would have breakfast that
22 they were there on time.

23 Q. Okay. So if they were on time they would have breakfast?

24 A. Yes, sir.

25 Q. Okay. Did they ever appear to have had breakfast before they

1 where he was at grade level wise. I don't know if I could
2 get a complete picture of his learning and his growth was the
3 main thing I was concerned of. He was at grade level and my
4 worry was if he would continue to be at grade level with his
5 attendance.

6 Q. And was there a point in time during the school year where
7 you noticed a change in his behavior?

8 A. The last few weeks that I had him his behavior became -- he
9 was always so quiet, he stayed in his seat, he did exactly
10 what was asked of him -- the last couple weeks I noticed him
11 out of his seat a little bit more, not following directions,
12 maybe even a little bit more combative like wanting to put
13 hands on others, but I had no idea why. When I asked he
14 would just smile and laugh and say no, he is good.

15 Q. Did you send any letters home to mom or dad or both regarding
16 the missed assignments, the missed assessments or his
17 behavior?

18 A. His missed assignments and assessments were listed in his
19 report cards and progress reports and stuff like that.
20 Contacting parents was sometimes difficult. The phone
21 numbers we had on file weren't always working. When I --
22 when we did parent teacher conferences I called and emailed
23 multiple times and then I did end up getting ahold of the
24 parents via an app on my phone, it is called ClassDojo where
25 I can text parents through an app and I was able to get a

1 Kujacznski knows that.

2 THE COURT: Could the Court order it?

3 MR. JOHNSON: No the Court cannot, per statute.

4 THE COURT: Well -- I --

5 MR. JOHNSON: Per statute. There has to be a
6 certain finding.

7 THE COURT: First of all I have zero evidence of
8 drug use in this case so far so I really don't care what the
9 allegations are. I will let you reserve it if there is other
10 evidence of drug use, but at this point it is not relevant as
11 to why.

12 MR. KUJACZNSKI: Okay. That is all then, thank
13 you.

14 THE COURT: Ms. Gleason, any questions?

15 MS. GLEASON: Thank you.

16 CROSS-EXAMINATION

17 BY MS. GLEASON:

18 Q. Regarding the appearance of the apartment. You said there
19 was trash?

20 A. Yeah.

21 Q. Was it in one area or throughout the apartment?

22 A. It was scattered throughout the apartment.

23 Q. Specifically what do you -- open cans of food or what? What
24 was it that you saw?

25 A. Just like bags and paper towels and stuff like that

1 throughout. There wasn't like any one objects that really
2 stood out --

3 Q. Okay.

4 A. -- it was kind of cluttered like right as you walk in and
5 then all along the outer edges of the apartment.

6 Q. Was it -- this was an apartment complex, correct?

7 A. Yes.

8 Q. Did it pose a safety concern or was it just messy and dirty?
9 I mean can you describe that a little further?

10 A. Well, we could enter the home so it was just really messy and
11 dirty.

12 Q. All right. Was it below community standards?

13 A. I wouldn't say that.

14 Q. And you don't know whether -- you can't recall whether the
15 power was on or off at that time, but you think it was on?

16 A. I believe that it was -- it was still mid-day, but I believe
17 that there was a kitchen light on.

18 Q. All right. And when you -- this was an unscheduled meeting
19 at the apartment?

20 A. Yes.

21 Q. Do you identify -- did you identify yourself?

22 A. Yes.

23 Q. With like a badge etcetera?

24 A. Yep.

25 MS. GLEASON: All right. Thank you.

1 THE COURT: Anything further, Mr. Johnson?

2 MR. JOHNSON: No, your Honor.

3 THE COURT: Okay. You don't have to. I just
4 always -- you have the burden so I always give them the last
5 word.

6 This is a -- I think this is one of those cases
7 that it is difficult to prove certain things, but I respect
8 all of the attorneys in the room and I almost disagree with
9 all of you on things, which makes me wonder if I am wrong,
10 but the bottom line is I have the right to look at the past
11 file, but I agree with Ms. Bradfield, I am not going to
12 convict them on past behaviors. They've -- as far as I know
13 corrected those behaviors. I will definitely look at that
14 for disposition and interim disposition.

15 Look it's -- I am a very big propionate of I don't
16 like the government telling people what to do so the -- it is
17 not against the law to argue with a spouse or everyone would
18 be in Court.

19 It is not against the law to drink a beer or two.
20 The child -- wonderful child, but there were so many -- and
21 it is nobody's fault, you can only get what you can get out
22 of a child. A beer. You didn't get like he drank ten beers
23 or a lot. There is no crime to drinking beer. Whether or
24 not he actually feel asleep or mom just took over cooking,
25 even if he fell asleep it is not a crime.

1 It is not a crime to smoke. She said something was
2 inhaled, she thought it was drugs, could have been
3 cigarettes. It is not against the law to leave the ten year
4 old at home. Now I would like to think they are both out
5 working, but I also know through the past case and their
6 history that is probably not the case, but it is not against
7 the law. There was actually even a safety plan involved with
8 that.

9 It is not against the law to be in the middle of an
10 eviction process. That is why they call it a process. We
11 need due process. There is a lot of slummy landlords out
12 there that try to kick people out so I can't hold those
13 things against them, but it is a preponderance of the
14 evidence, but here is beyond a reasonable doubt in this
15 Court's mind that you miss that much school and the parents
16 don't even come into school when given opportunities to try
17 to correct that that is child abuse.

18 And I am glad the children are doing sort of well.
19 How well could they be doing if they were actually in school?
20 We have 22 absences in a period from September 11 through
21 January 29th with regards to Brianna and I think there were
22 only five of those were excused and numerous tardies -- 11
23 tardies and she had only been attending class 74 percent of
24 the time.

25 The average is not 100 percent, it is 85.

1 MR. JOHNSON: Okay. No other questions.

2 THE COURT: Ms. Bradfeild?

3 MS. BRADFIELD: Have you had contact with mom and
4 dad recently?

5 MS. WELCH-WALKER-BOYD: Yes.

6 MS. BRADFIELD: Okay. Did -- do you have trouble
7 getting into contact with them?

8 MS. WELCH-WALKER-BOYD: No. They are pretty good
9 about text message contacts.

10 MS. BRADFIELD: Do you know why they are not
11 visiting the kids?

12 MS. WELCH-WALKER-BOYD: From what they have told me
13 there is a lot of health problems with dad. He has crohn's
14 disease. I have asked for documentation for times that he
15 was hospitalized because I -- at one point I tried to take
16 the kids up to the hospital to have a visit. Borgess said no
17 because of -- it was during that flu outbreak, but the other
18 time I tried to go visit him myself and they were not able --
19 they don't not have a release for me so they were not able to
20 tell me like room or anything about him and they didn't --
21 they cut off communication after that for a while.

22 MS. BRADFIELD: But they weren't telling you that
23 he wasn't there, correct?

24 MS. WELCH-WALKER-BOYD: Correct. They couldn't
25 tell me either way.

STATE OF MICHIGAN
9TH JUDICIAL CIRCUIT COURT - FAMILY DIVISION
FOR THE COUNTY OF KALAMAZOO

IN THE MATTER OF BRIANNA SMITH (01/16/2008)
and BRIAN SMITH JR. (4/23/11)

Case No.: 2018-0053-NA

DISPOSITIONAL HEARING

BEFORE REFEREE DOUGLAS CAMERON

Kalamazoo, Michigan - Monday, April 23, 2018

APPEARANCES:

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AUDIO/VIDEO RECORDED

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1
2 MS. WELCH-WALKER-BOYD: Yes.

3 (At 1:44 p.m., Emily Welch-Walker-Boyd sworn in)

4 THE COURT: All right. So what are we doing here
5 for disposition on these two parents?

6 MS. WELCH-WALKER-BOYD: For disposition I have
7 already actually gone over the parent agency treatment plan
8 with the father. I have not been able to locate the mother
9 in the last couple weeks since the plan has been completed
10 and signed, but right now what we are asking them to do is
11 participate in a counseling -- or I am sorry -- a
12 psychological assessment. It was actually Court ordered at
13 the previous hearing to have that done before coming to this
14 hearing, however the earliest they were able to get in is
15 June 25th. They -- I did get a contact information for
16 another gal that works through that same office and they said
17 if the parents are willing and able to come to Battle Creek
18 they might be able to get in a little sooner. Right now they
19 are just very busy.

20 And the parents also are able to -- call the access
21 center and try to get an assessment through them as well, but
22 that is something they would have to do independent from DHS
23 and any referrals.

24 And I did speak with the parents about counseling.
25 Dad is on board with some counseling. We have the issues of

1 MS. WELCH-WALKER-BOYD: Yes.

2 MR. JOHNSON: Okay. So no concerns there then?

3 MS. WELCH-WALKER-BOYD: No. And I did provide the
4 parents with an outline of dates and times and locations and
5 contact information as well as policy -- their own policy as
6 far as attendance goes.

7 MR. JOHNSON: When is the last time that mom
8 attended a parenting time?

9 MS. WELCH-WALKER-BOYD: Let me see. It was the
10 first week of April -- no, I am sorry -- I am sorry -- it was
11 the week before spring break. So the last week of March.

12 MR. JOHNSON: So how many has she missed then?

13 MS. WELCH-WALKER-BOYD: All of them since, which
14 would be three.

15 MR. JOHNSON: Okay.

16 MS. WELCH-WALKER-BOYD: And prior to that she only
17 attended one.

18 MR. JOHNSON: And as far as dad has he attended all
19 of them?

20 MS. WELCH-WALKER-BOYD: Yes. All the ones that he
21 has been able to come outside of him having emergency
22 hospital issues with his -- he has chron's disease --

23 MR. JOHNSON: Okay.

24 MS. WELCH-WALKER-BOYD: -- and so outside of him
25 being hospitalized and having emergency room visits he has

STATE OF MICHIGAN
9TH JUDICIAL CIRCUIT COURT - FAMILY DIVISION
FOR THE COUNTY OF KALAMAZOO

IN THE MATTER OF BRIANNA SMITH (01/16/2008)
and BRIAN SMITH JR. (4/23/11)

Case No.: 2018-0053-NA

REVIEW HEARING

BEFORE REFEREE DOUGLAS CAMERON
Kalamazoo, Michigan - Thursday, August 30, 2018

APPEARANCES:

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1 Mr. Brian -- I am sorry -- Brian has reported that he is
2 unemployed, but last parenting time he notified me that he
3 would be starting a job.

4 He also notified me at last parenting time, which
5 we have an exhibit, that he would be getting disability
6 checks shortly and be getting back pay from the time he
7 originally applied for it.

8 As far as for parenting time with the father and
9 with the kids the kids are well bonded. Every time we have
10 had a parenting time Mr. Smith brings activities for the kids
11 to do and they all engage in the activities together. This -
12 - actually last parenting time he grilled. Him and the son
13 were grilling together and he was interacting with the
14 daughter.

15 In the matter of the mother, Tammy, she also has
16 been no compliant with the drug screening. I had a
17 conversation with her as well and she told me that she is not
18 going to participate in drug screening.

19 As far as with housing she also reported that she
20 is homeless living from house to house or sleeping in a car.
21 Asked her would a shelter -- would she be willing to go to a
22 shelter. She said no. Mr. Brian said that as well -- Mr.
23 Smith, I am sorry -- Mr. Smith said that as well.

24 Tammy also reported that she is unemployed.

25 As far as her parenting time also, the parenting

1 I.D.?

2 MS. WASHINGTON: Two visits -- the first visit that
3 we had we talked about the I.D. thing and him telling me he
4 didn't have an I.D. and he telling me that he would get it
5 done within a week. The following week occurred, he still
6 didn't have his I.D. He was still working on getting his
7 I.D.

8 MS. BRADFIELD: Okay. He tells me that during this
9 report period there was at least two screens through Forensic
10 Fluids that was done because he had his I. D., then he lost
11 it, but I don't see any paperwork showing the results of
12 those screens.

13 MS. WASHINGTON: I didn't provide the -- I didn't -
14 - it must have been the former case worker. I didn't do the
15 screen.

16 MS. BRADFIELD: Okay. He also tells me that he was
17 told two different colors. Can you clarify?

18 MS. WASHINGTON: At the last court hearing I was
19 notified of that and I went on the system and told him what
20 his actual color was.

21 MS. BRADFIELD: Okay. Is there any way to find out
22 if he is even calling and then just unable to go? I have
23 seen reports no call --

24 MS. WASHINGTON: Not that I am aware of.

25 MS. BRADFIELD: Okay.

1 are very happy.

2 Both children miss their parents. Little Brian is
3 not little, he is a big big overly healthy young man. His
4 speech is a little difficult to follow, but that will be
5 addressed I am sure when school starts up again.

6 Regarding Brianna she is a beautiful, very smart,
7 young lady. She is very traumatized by the canceled visits
8 with the parents. She started crying when I was visiting her
9 the other night. She's -- she loves her school. She wants
10 to -- she said to me she wants to go to middle school and
11 high school where she is living. She does like to see her
12 parents. She is a little upset about -- very upset about the
13 missed visits.

14 The home is very appropriate. Both children are
15 cared for medically, educationally and otherwise. My biggest
16 concern is the missed visits and how it impacts the children.

17 Thank you.

18 Oh one last thing with Brianna. She -- she is
19 really in quite desperate need of someone to talk to, a
20 counselor. I don't know about little Brian, he is a -- he is
21 just a little kid and he is happy as could be, but Brianna is
22 very smart, has some understanding of what is going on and
23 she really does need a referral to talk to a counselor. She
24 is asking that it could be a female.

25 Thank you.

STATE OF MICHIGAN
9TH JUDICIAL CIRCUIT COURT - FAMILY DIVISION
FOR THE COUNTY OF KALAMAZOO

IN THE MATTER OF BRIANNA SMITH (01/16/2008)
and BRIAN SMITH JR. (4/23/11)

Case No.: 2018-0053-NA

REVIEW HEARING

BEFORE REFEREE DOUGLAS CAMERON

Kalamazoo, Michigan - Tuesday, November 27, 2018

APPEARANCES:

For the Minors: MS. MARGARET GLEASON, (P50117)
3150 Kalarama
Portage, MI 49024
(269) 342-5488

For the Mother: MS. SUSAN PRENTICE-SAO, (P68250)
PO Box 207
Plainwell, MI 49080
(269) 685-6868

For the Father: MS. JULIE BRADFIELD, (P71746)
621 S. Park Street
Kalamazoo, MI 49007
(269) 352-7255

AUDIO/VIDEO RECORDED

TRANSCRIBED BY: Ms. Rebecca S. Quarry, CER 8376
Certified Electronic Recorder
(269) 377-7330

1 if she is actually seeing the school counselor? Is that
2 something that you could follow-up on?

3 MS. LEIGHTNER: Yes.

4 MS. GLEASON: All right. And they are involved in
5 a church activity here -- your understanding is that correct?

6 MS. LEIGHTNER: That is correct.

7 MS. GLEASON: She is bonded with her big brother,
8 Brian?

9 MS. LEIGHTNER: Yes.

10 MS. GLEASON: And when she does see her parents --
11 the children like seeing their parents and there is a bond?

12 MS. LEIGHTNER: They do. They look forward to
13 visits and Brianna has told me that it has become normal to
14 not see them consistency -- or consistently.

15 MS. GLEASON: Now are you aware of any depression
16 on Brianna's part? Has she ever talked to you about that?

17 MS. LEIGHTNER: She hasn't talked to me so much,
18 but I have heard a little bit about that from Sandy and the
19 previous case worker. Just feeling down. I think it is
20 taking a toll on the kids not being able to see their
21 parents. They love them and they do want to be with them.

22 MS. GLEASON: All right. And that would be one of
23 the reasons then too to ensure that there is some type of
24 counseling for Brianna because of her age and needs?

25 MS. LEIGHTNER: Correct.

STATE OF MICHIGAN
9TH JUDICIAL CIRCUIT COURT - FAMILY DIVISION
FOR THE COUNTY OF KALAMAZOO

IN THE MATTER OF BRIANNA SMITH (01/16/2008)
and BRIAN SMITH JR. (4/23/11)

Case No.: 2018-0053-NA

TERMINATION HEARING & PERMANENCY PLANNING HEARING

VOLUME I OF III

BEFORE THE HONORABLE G. SCOTT PEIRANGELI
Kalamazoo, Michigan - Tuesday, July 2, 2019

APPEARANCES:

For the Petitioner:	MR. PAUL YANCHO, (P72703) 1536 Gull Road Kalamazoo, MI 49048 (269) 383-8900
For the Minors:	MS. MARGARET GLEASON, (P50117) 3150 Kalarama Portage, MI 49024 (269) 342-5488
For the Mother:	MS. NANCY KIRKPATRICK, (P51341) 325 N. Burdick St. Kalamazoc, MI 49007 (269) 978- 3351
For the Father:	MS. JULIE BRADFIELD, (P71746) 621 S. Park Street Kalamazoo, MI 49007 (269) 352-7255

AUDIO/VIDEO RECORDED

TRANSCRIBED BY: Ms. Rebecca S. Quarry, CER 8376
Certified Electronic Recorder
(269) 377-7330

1 beer. When he asked for a refill mom said, no you don't need
2 anymore. Drink water. Would you consider that to be
3 appropriate parenting?

4 A. Yes.

5 Q. Okay. Now the termination petition indicates that while the
6 parents have had a spotty record of attendance and are often
7 late the generally engage well with the children and are
8 appropriate. Do you think that is a true statement?

9 A. Far as being engaged with the parents and attending parenting
10 time? That is a true statement, yes.

11 Q. And that they are appropriate?

12 A. Yes.

13 Q. Okay. Have you had a discussion with the children about
14 terminating the rights of their parents?

15 A. No. The Department has not discussed that. The Department
16 has asked how would they feel if they were unable to go home
17 to their parents and if they were unable to be placed back
18 with their parents.

19 Q. Okay. Is there any family that have inquired about permanent
20 placement of the children?

21 A. There is one uncle, but he is inquiring for Brianna only.
22 Not for both.

23 Q. Did he say why?

24 A. Just due to his schedule he was -- he just wanted Brianna.
25 Department has not had any contact with him at this date to

STATE OF MICHIGAN
9TH JUDICIAL CIRCUIT COURT - FAMILY DIVISION
FOR THE COUNTY OF KALAMAZOO

IN THE MATTER OF BRIANNA SMITH (01/16/2008)
and BRIAN SMITH JR. (4/23/11)

Case No.: 2018-0053-NA

TERMINATION HEARING

VOLUME III OF III

BEFORE THE HONORABLE G. SCOTT PEIRANGELI
Kalamazoo, Michigan - Friday, September 13, 2019

APPEARANCES:

For the Petitioner:	MR. PAUL YANCHO, (P72703) 1536 Gull Road Kalamazoo, MI 49048 (269) 383-8900
For the Minors:	MS. MARGARET GLEASON, (P50117) 3150 Kalarama Portage, MI 49024 (269) 342-5488
For the Mother:	MS. NANCY KIRKPATRICK, (P51341) 325 N. Burdick St. Kalamazoo, MI 49007 (269) 978- 3351
For the Father:	MS. JULIE BRADFIELD, (P71746) 621 S. Park Street Kalamazoo, MI 49007 (269) 352-7255

AUDIO/VIDEO RECORDED

TRANSCRIBED BY: Ms. Rebecca S. Quarry, CER 8376
Certified Electronic Recorder
(269) 377-7330

1 Q. 15th of August?

2 A. Not in the records we have.

3 Q. How about the 16th of August?

4 A. No.

5 Q. 26th of August?

6 A. Not in those records.

7 Q. 30th?

8 A. Not in those records.

9 Q. How about the 10th of September?

10 A. Also not in those records.

11 Q. Okay. Have you met with the parents on this case?

12 A. I have only had the opportunity to meet with Brian. We had a
13 meeting scheduled on the 11th for a family team meeting and
14 Brian was the only one that showed up.

15 Q. Okay. And what was the purpose of that family meeting?

16 A. To just get a face to face together. Let him know -- let
17 both of the parents know that the case had transferred to a
18 new worker and make sure that we could come up with all of
19 the services that were needed for the rest of the duration of
20 the case, also what progress has been made if any.

21 Q. And who is the new worker assigned to the case?

22 A. The new worker is Summer Frederick.

23 Q. And what services did you discuss with dad at that family
24 team meeting?

25 A. We discussed substance use, domestic violence, parenting,

1 A. He did not come to the meeting with any medical documentation
2 he just verbally reported.

3 Q. Okay. But that looks consistent with what he would normally
4 been -- reported to you with the exception of the Klonopin?

5 A. Yes.

6 Q. Okay. To your knowledge Mr. Smith is not employed?

7 A. Correct.

8 Q. But he receives disability, correct?

9 A. Correct.

10 Q. Okay. So he does have a source of income?

11 A. Yes.

12 Q. Approximately \$2,000 a month?

13 A. That is what he reported to me, yes.

14 Q. Okay. What is your knowledge of his counseling for substance
15 abuse?

16 A. He had indicated that he does not have any services for
17 substance abuse aside from the -- what was referred for the
18 drug screens which he was not able to attend because he
19 doesn't have an I.D.

20 Q. Okay. Has he told you that he does see a counselor quite
21 regularly though for his family counseling?

22 A. He said he does attend a couple's counseling. It is a
23 private counselor. We asked for information, he said that
24 they wouldn't talk to us anyways and it is about three hours
25 a session once a month I believe.

1 Q. Okay. But it would probably be hard to keep a full time job
2 would it not?

3 A. Yeah, it would be difficult.

4 Q. Okay. But you do receive social security disability and at
5 least at this point it is sufficient?

6 A. Yes.

7 Q. Are you opposed to finding a job to help supplement if
8 necessary?

9 A. No. No, I am not.

10 Q. All right. Mr. Smith, you -- it has been reported today that
11 you have a new address as of a month at 903 26th Street in
12 Allegan, is that accurate?

13 A. Yes.

14 Q. Can you explain this location? Describe it?

15 A. It is on a 600 acre property. Large fam -- large family, it
16 is a three bedroom home and the owner lives in the home and
17 he is going to be building another addition to the home in
18 the back and he is providing us with a three bedroom home --

19 Q. Okay.

20 A. -- if needed.

21 Q. All right. Do you have a lease with this individual?

22 A. He is a farmer, I mean, everything is done by the shake of a
23 hand.

24 Q. Okay. How long have you known this individual?

25 A. For about a year.

1 abuse, housing and counseling.

2 Also by clear and convincing evidence other
3 conditions exist that case the child to come within the
4 Court's jurisdiction. The parent has received
5 recommendations to rectify those conditions. Conditions have
6 not been rectified by the parent after the parent has given
7 notice and reasonable opportunity to rectify the conditions
8 and there is not reasonable likelihood the conditions will be
9 rectified within a reasonable time considering the children's
10 age. Contrary to MCL 712A.19b(3)(c)(ii). That includes the
11 moving to a new home, that includes no counseling, no record
12 of counseling. One domestic violence class does not
13 constitute domestic violence counseling and again -- so those
14 issues are met with (C)(ii).

15 With regards to the last portion the Prosecution
16 argued I do believe by clear and convincing evidence there is
17 a reasonable likelihood based on conduct or capacity of the
18 child's parent -- parents that the children will be harmed if
19 they are returned to the home of the parent contrary to MCL
20 712A.19b(3)(j). I have no doubt these parents love their
21 children. I don't think there would be any physical harm,
22 but the emotional harm of going back and forth and not having
23 the stability. I have no idea who is going in and out of
24 that home.

25 I do believe income is the one thing that they

1 kids have been in care for -- since January 2018 and this
2 Court doesn't see any hope that they will be able to return
3 home anytime soon. They need permanency. They are bonded
4 together and they are in a home that is caring for them and
5 hopefully -- I cannot tell what their future is, but if it is
6 like their past they will get more stability whatever is
7 because mom and dad have chosen not to cooperate with
8 services for this long.

9 So I do believe it is in the best interest.

10 There is no alternative based on the age of the
11 children. I don't believe -- today there was talk of, well
12 there might be family members. I will order that the case
13 workers look into all possible family members for adoption,
14 but there has never been the names given to case workers with
15 regards to placement so I don't blame the Department for
16 that. I think they found a safe, loving, caring, placement
17 for the children.

18 There has been no testimony of any Native American
19 heritage.

20 I do believe that it would be in the best interest
21 to terminate the parental rights because these kids have
22 waited and the answers that I was hoping the parents would
23 give us have not come and they are not more stable today than
24 when this case first came in.

25 Court finds reasonable efforts were made to

STATE OF MICHIGAN
9TH JUDICIAL CIRCUIT COURT - FAMILY DIVISION
FOR THE COUNTY OF KALAMAZOO

IN THE MATTER OF BRIANNA SMITH (01/16/2008)
and BRIAN SMITH JR. (4/23/11)

Case No.: 2018-0053-NA

PERMANENCY PLANNING HEARING
BEFORE THE HONORABLE G. SCOTT PEIRANGELI
Kalamazoo, Michigan - Friday, September 13, 2019

APPEARANCES:

For the Minors: MS. MARGARET GLEASON, (P50117)
3150 Kalarama
Portage, MI 49024
(269) 342-5488

AUDIO/VIDEO RECORDED

TRANSCRIBED BY: Ms. Rebecca S. Quarry, CER 8376
Certified Electronic Recorder
(269) 377-7330

1 c-i-o-t-t-i.

2 (At 12:02 p.m., Brandi Casciotti sworn in)

3 THE COURT: Ms. Casciotti, we just completed a
4 termination of mom and dad's rights. What re the plans with
5 regards to Brianna and Brian?

6 MS. CASCIOTTI: Brianna and Brian both reside in
7 the same foster home they have been residing in since January
8 of 2018. They are doing well in that foster home. They are
9 involved in extracurricular activities and family outings and
10 they are happy and healthy young kids.

11 With regard to the permanency plan the goal is
12 adoption. The referral to adoption will be made in the very
13 near future and we will move forward with that goal.

14 Also, researching any identified relatives that the
15 parents have been able to provide.

16 THE COURT: For the record in the termination I
17 think it was the first time it was ever brought up dad said
18 there might have been relatives out there so I would
19 encourage the Department to do that.

20 MS. CASCIOTTI: Yes.

21 THE COURT: Okay. Ms. Gleason, any questions?

22 MS. GLEASON: I have no questions. Just I have
23 kind of given a report to the Court. I did -- I have had
24 several -- I think two in person visits in the last couple
25 months with the children in their foster home out in

9/13/2019 Order Terminating Parental Rights

9:13-11:56

JIS CODE: TRP

Approved, SCAO

Duration: ~~120~~

STATE OF MICHIGAN 9th JUDICIAL CIRCUIT KALAMAZOO COUNTY	ORDER FOLLOWING HEARING TO TERMINATE PARENTAL RIGHTS, PAGE 1 ORDER OF	CASE NO. 2018-0053-NA PETITION NO. S01
Court Address FAMILY DIVISION - 1536 GULL ROAD, KALAMAZOO, MI 49048		Court telephone no. 269-385-6000

- In the matter of Brianna Smith
Brian Smith, Jr.
name(s), alias(es), DOB 01/16/2008
04/23/2011
- Date of hearing: 09/13/2019 Judge G. Scott Pierangeli, P57316 Bar no.
- Removal date: 01/23/2018 (Specify for each child if different.)
- An adjudication was held and the children was/were found to come within the jurisdiction of the court.
- A petition to terminate parental rights has been filed and notice of hearing on the petition was given as required by law.
- Specific findings of fact and law regarding this proceeding have been made on the record or by separate written opinion of the court.

THE COURT FINDS:

- ☒ a. Reasonable efforts were made to preserve and unify the family to make it possible for the child(ren) to safely return to the children's home. Those efforts were unsuccessful.
 ☐ b. Reasonable efforts were not made to preserve and unify the family because it was previously determined in a prior court order to be detrimental to the child(ren)'s health and safety.
 ☐ c. Reasonable efforts were not required to preserve and reunify the family as determined in a prior court order. (This requires a permanency planning hearing within 28 days.)
- ☐ 8. The child(ren) is/are Indian as defined in MCR 3.002(12).
 ☐ a. Active efforts have not been made.
 ☐ b. Active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family. These efforts have proved unsuccessful and **there is** evidence beyond a reasonable doubt, including qualified expert witness testimony, that continued custody of the child(ren) by the parent(s) or Indian custodian will likely result in serious emotional or physical damage to the child(ren).
 ☐ c. Active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family. These efforts have proved successful and **there is not** evidence beyond a reasonable doubt, including qualified expert witness testimony, that continued custody of the child(ren) by the parent(s) or Indian custodian will likely result in serious emotional or physical damage to the child(ren).
- There is clear and convincing evidence that a statutory basis exists for terminating the parental rights of Tammy Gann-Smith and Brian Smith, parents of the children.
Name(s) of parent(s)
- Termination of parental rights ☒ is ☐ is not in the best interests of the children.

(SEE SECOND PAGE)

NOTE: If a child remains in foster care and parental rights are terminated in accordance with MCL 712.A.19a(2), a permanency planning hearing must be held within 28 days. If proper notice has already been given, the permanency planning hearing can be conducted immediately following the termination hearing. This is especially useful in obtaining a uniform date for future permanency planning hearings when parental rights have been terminated to more than one child and the removal dates of the children are different. Use form JC 76.

USE NOTE: Do not use this form when terminating parental rights after release under the adoption code. Use form PCA 318 and PCA 322. If one parent has signed a release under the adoption code, do not include his or her name.

Do not write below this line if for court use only

SEP 13 2019

KALAMAZOO COUNTY
CIRCUIT COURT
FAMILY DIVISION
FILED

RECEIVED by MSC 11/4/2020 12:23:32 PM

9/13/2019 Order Terminating Parental Rights

RECEIVED by MSC 11/4/2020 12:23:32 PM

Approved, SCAO		JIS CODE: TRP
STATE OF MICHIGAN 9 th JUDICIAL CIRCUIT KALAMAZOO COUNTY	ORDER FOLLOWING HEARING TO TERMINATE PARENTAL RIGHTS, PAGE 2 ORDER _____ OF _____	CASE NO. 2018-0053-NA PETITION NO. S01
Court Address FAMILY DIVISION - 1536 GULL ROAD, KALAMAZOO, MI 49048		Court telephone no. 269-385-6000
In the matter of Brianna Smith Brian Smith, Jr.		01/16/2008 04/23/2011

IT IS ORDERED:

11. The parental rights of Tammy Gann-Smith and Brian Smith
Name(s) of parent(s)
are terminated, and additional efforts for reunification of the child(ren) with the parent(s) shall not be made.
- ☒ 12. ☐ a. The child(ren) is/are continued in the temporary custody of this court and remain in placement with the department for care and supervision.
- ☒ b. The children are committed to the department for permanency planning, supervision, care, and placement under MCL 400.203.
- ☒ 13. While the children are placed out of the home, the friend of the court shall redirect current support due on behalf of the children to the person with whom the children are placed as long as that person is not receiving foster care maintenance payments. Unpaid child support that is charged during the unfunded placement shall also be redirected unless otherwise assigned.
- ☒ 14. The Director of the department is appointed special guardian to receive any benefits now due or to become due the children from the government of the United States.
- ☒ 15. Other: (Include reimbursement provisions as required by MCL 712A.18[2], attach separate sheet.)
Exhibits #65 through #71 were admitted.
Attorneys Kirkpatrick and Bradfield are thanked and discharged.
Caseworker shall investigate all family members for potential placement of the children.
A final visit is authorized for the parents. With medical proof, the visit can be scheduled one time.
- The following parties were present:
Li'ara Berry, MDHHS Caseworker
Paul Yanco, Assistant Prosecuting Attorney
Maggie Gleason, Guardian Ad Litem
Julie Bradfield, Attorney for Father
Nancy Kirkpatrick, Attorney for Mother
Brian Smith, Father
Tammy Gann-Smith, Mother (left hearing prior to it's conclusion at 11:50 a.m.)
16. The court reserves the right to enforce payments of reimbursement that have accrued up to and including the date of this order.
- ☐ 17. The supplemental petition to terminate the parental rights of _____ is denied.
Name(s) of parent(s)
18. A ☐ review hearing ☒ permanency planning hearing will be held immediately
Date
- The statutory review hearing scheduled for 10/15/2019 is cancelled.

9/13/19
Date

[Signature]
Judge G. Scott Pierangeli

9/13/2019 Order Terminating Parental Rights

RECEIVED by MSC 11/4/2020 12:23:32 PM

STATE OF MICHIGAN 9 TH CIRCUIT COURT KALAMAZOO COUNTY	PROOF OF SERVICE/NON-SERVICE	2018-0053NA
--	------------------------------	-------------

Court address

Family Division – 1536 Gull Road, Kalamazoo, MI 49048(269) 385-6000

Court telephone no.

In the matter of Brianna Smith (01/16/08) & Brian Smith Jr (04/23/11) Date of hearing: _____
Names(s), Alias(es), DOB

I served an Order Terminating Parental Rights (09/13/19) & **Advice of Rights Following Termination

and
SERVICE BY MAIL

On 9/13/19

I served the above papers, copies of which are either attached or were previously filed with the court, on the following person(s) by ☐ 1ordinary ☐ 2certified ☐ 3registered mail addressed to their last known address(es).

NAME	ADDRESS(ES)	CODE
**Tammy Gann-Smith	c/o MDHHS caseworker Brandi Casciotti	
**Brian Smith	c/o MDHHS caseworker Brandi Casciotti	
Pros Atty		

Date: 09/13/2019

Signature: 9/13/19 [Signature]

PERSONAL SERVICE

Copies of the above papers were served personally by me on the following person(s):

NAME	PLACE OF SERVICE	DATE AND TIME
Brandi Casciotti, DHHS	1536 Gull Rd, Kalamazoo MI 49048	9/13/19 @ 11:58 am
Atty Gleason, Kirkpatrick & Bradfield	<u>I</u>	<u>I</u>

I declare that this proof of service/non-service has been examined by me and that its contents are true to the best of my information, knowledge and belief.

Date: 9/13/19

Signature: [Signature]

PARTIES PRESENT	
Parent(s)	Attorney
Step Parent/Guardian	Other
Juvenile	Other
Petitioner	Other

STATE OF MICHIGAN
COURT OF APPEALS

In re SMITH, Minors.

UNPUBLISHED
April 30, 2020

No. 351095; 351178
Kalamazoo Circuit Court
Family Division
LC No. 18-000053-NA

Before: RIORDAN, P.J., and FORT HOOD and SWARTZLE, JJ.

PER CURIAM.

In these consolidated appeals, respondent-father and respondent-mother appeal by right the trial court's order terminating their parental rights to their children, BS and BS, Jr. Finding no error requiring reversal, we affirm.

I. BACKGROUND

The two children in this case were frequently absent from school, with about a 75% attendance rate from November 2017 to January 2018. Although respondents had prior involvement with petitioner dating back to 2013 with these children because of neglect, including domestic-violence and substance-abuse issues, the issue at the adjudication trial was educational neglect stemming from the children's absences from school.

Testimony at the adjudication trial indicated that BS, Jr. was performing at grade level, and there was no indication that he had fallen behind on his school work because of his absences. His teacher testified, however, that he had missed many assessments in reading, spelling, and math. She also testified that she could not get a complete picture of his learning needs and performance because of his absences and missed assessments. Moreover, she stated that he never returned his homework assignments, and that respondents failed to return his report cards with a signature as required by the school. His teacher was concerned that he might not be able to maintain his academic level with his continued absences. Although none of BS's teachers testified, the evidence indicated that she had a 74% attendance record during the same timeframe as BS, Jr. Additionally, the children's attendance rate was below the school's average attendance of 85%.

In his closing argument at the adjudication trial, respondent-father opposed the trial court's exercise of jurisdiction over the children. At the conclusion of the proofs, the trial court assumed

jurisdiction over the children based on its finding of educational neglect stemming from their absences from school.

After the trial court placed the children in foster care, it provided both respondents with a parent-agency-treatment plan (PATP) that required drug screens, parenting-time visits, counseling, and a psychological evaluation. In addition, the PATP required both respondents to obtain suitable employment and an appropriate home. It appears from the record that respondents had several family tragedies during the year leading to the children's removal. After their removal, respondents attended parenting-time visits, but otherwise refused to engage in any services to help them address the barriers for reunification with their children. After about 18 months of this lack of participation, the trial court terminated both respondents' parental rights.

Respondent-mother was unemployed for the entirety of the case. She was also homeless for the majority of the proceedings, and her housing was still not verified as of the termination hearing. Although she was required to participate in weekly drug screens, she refused to attend any of those screens, which petitioner therefore considered to be positive. She also failed to engage in any counseling or participate in her two scheduled psychological evaluations. She only participated partially in the court proceedings during this case, and she walked out of multiple family-team meetings with the caseworkers. The caseworkers suspected respondent-mother of being under the influence of drugs during parenting-time visits and believed that she fell asleep during those visits.

At the time of termination, the children had been in foster care for about 21 months. The trial court noted that they were in a foster home that was familiar to them, provided them with love and affection, and ensured that all of their needs were being met. Although the potential for adoption was uncertain, the trial court found that the foster home and a potential adoption family provided the children with substantially more permanence and stability than they experienced in respondents' care.

After the termination of respondents' parental rights, these appeals followed.

II. ANALYSIS

A. RESPONDENT-FATHER

On appeal, respondent-father only contests the trial court's exercise of jurisdiction over the children. He does not contest the trial court's findings of fact or ultimate decisions regarding the statutory grounds for termination or the best interests of the children.

Both parties agree that the trial court's exercise of jurisdiction is unpreserved and should be reviewed for plain error. As noted above, however, respondent-father opposed the court's assumption of jurisdiction during his closing argument at the adjudication trial. When a party raises an issue in the trial court and pursues it on appeal, the issue is appropriately before this Court. *Peterman v Dep't of Natural Resources*, 446 Mich 177, 183; 521 NW2d 499 (1994).

"We review the trial court's decision to exercise jurisdiction for clear error in light of the court's findings of fact." *In re BZ*, 264 Mich App 286, 295; 690 NW2d 505 (2004). A decision

is “clearly erroneous if, although there is evidence to support it, we are left with a definite and firm conviction that a mistake has been made.” *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009) (cleaned up). We review de novo the interpretation and application of statutes. *In re Sanders*, 495 Mich 394, 404; 852 NW2d 524 (2014).

“The question at adjudication is whether the trial court can exercise jurisdiction over the child (and the respondents-parents) under MCL 712A.2(b) so it can enter dispositional orders, including an order terminating parental rights.” *In re Ferranti*, 504 Mich 1, 15; 934 NW2d 610 (2019) (cleaned up). The trial court may exercise jurisdiction after an adjudication trial if the petitioner has demonstrated that one or more of the statutory grounds for jurisdiction were proven by a preponderance of the evidence based on the allegations in the petition. *Id.* “Proof by a preponderance of the evidence means that the evidence that a statutory ground alleged in the petition is true outweighs the evidence that the statutory ground is not true.” M Civ JI 97.37.

MCL 712A.2 governs jurisdiction in child neglect proceedings, and provides that the trial court may exercise jurisdiction over a juvenile under 18 years of age whose parent “when able to do so, neglects or refuses to provide proper or necessary support, education . . . or other care necessary for his or her health or morals.” MCL 712A.2(b)(1). A child’s chronic absence from school is a sufficient basis for the trial court to assume jurisdiction on the ground of educational neglect as contemplated by the statute. See *In re Nash*, 165 Mich App 450, 455-456; 419 NW2d 1 (1987).

In light of the evidence regarding the children’s chronic absenteeism from school, we conclude that educational neglect was proven by a preponderance of the evidence. Respondent-father has not demonstrated clear error with regard to the trial court’s assumption of jurisdiction over the children.

B. RESPONDENT-MOTHER

Respondent-mother does not contest the trial court’s exercise of jurisdiction over the children. Rather, she challenges the trial court’s finding that statutory grounds existed to terminate her parental rights and its decision that termination was in the children’s best interests.

1. STATUTORY GROUNDS

Respondent-mother first argues that the trial court clearly erred in finding that a statutory ground for termination was proven by clear and convincing evidence. The trial court terminated respondent-mother’s parental rights under MCL 712A.19b(3)(c)(i), (c)(ii), and (j). To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination has been met by clear and convincing evidence. MCL 712A.19b(3); *In re VanDalen*, 293 Mich App 120, 139; 809 NW2d 412 (2011). We review the trial court’s determination for clear error. *Id.*

Termination under MCL 712A.19b(3)(j) is appropriate when “there is a reasonable likelihood, based on the conduct or capacity of the child’s parent, that the child will be harmed if he or she is returned to the home of the parent.” Meanwhile, “harm” includes physical as well as emotional harm. *In re Hudson*, 294 Mich App 261, 268; 817 NW2d 115 (2011). “[A] parent’s

failure to comply with the terms and conditions of his or her service plan is evidence that the child will be harmed if returned to the parent's home." *In re White*, 303 Mich App 701, 711; 846 NW2d 61 (2014).

In this case, the evidence indicated that respondent-mother failed to comply with nearly every aspect of her PATP. The only thing that respondent-mother did comply with was parenting time. And even then, the evidence indicated that the caseworkers suspected respondent-mother of being under the influence of drugs during parenting-time visits and that respondent-mother would fall asleep during those visits. Respondent-mother was homeless for the majority of the proceedings, and her housing was still not verified as of the termination hearing. She was also unemployed for the entirety of the case. Respondent-mother was supposed to participate in weekly drug screens, but she refused to attend any of her screens, which petitioner considered positive screens. She also did not engage in any counseling or participate in her two scheduled psychological evaluations. Respondent-mother only partially participated in the court proceedings during this case, and she walked out of multiple family-team meetings with the foster-care caseworkers.

The evidence of respondent-mother's lack of participation and benefit from the PATP is indicative of her inability to parent her children adequately, and of the risk of physical and emotional harm that she posed to the children if they were returned to her care. Thus, we are not "left with a definite and firm conviction that a mistake has been made," *In re HRC*, 286 Mich App at 459, in the trial court's findings and decision that MCL 712A.19b(3)(j) was proven by clear and convincing evidence. Because only one statutory ground need be established by clear and convincing evidence to terminate respondent-mother's parental rights, MCL 712A.19b(3); *In re Ellis*, 294 Mich App 30, 32; 817 NW2d 111 (2011), we decline to address the additional statutory grounds.

2. BEST INTERESTS OF THE CHILDREN

Respondent-mother also argues that the trial court clearly erred in determining that termination of her parental rights was in the best interests of the children. Before it may terminate parental rights, a trial court must find by a preponderance of the evidence that termination was in the children's best interests. *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). We review for clear error a trial court's findings of fact. *In re HRC*, 286 Mich App at 459.

"If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." MCL 712A.19b(5). In determining the children's best interests, the trial court may consider the children's bond to their parents; the parents' parenting ability; the children's need for permanency, stability, and finality; and the advantages of a foster home over the parent's home. *In re Olive/Metts*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012). "The trial court may also consider a parent's history of domestic violence, the parent's compliance with his or her case service plan, the parent's visitation history with the children, the children's well-being while in care, and the possibility of adoption." *In re White*, 303 Mich App at 714. Further, the trial court may consider a parent's substance-abuse problems and willingness to participate in counseling. *In re AH*, 245 Mich App 77, 89; 627 NW2d 33 (2001).

As discussed above, respondent-mother failed to participate in nearly every aspect of her PATP. Although we recognize that respondent-mother shared a bond with the children, they had been in foster care for about 21 months. Although the potential for adoption was uncertain, the foster home and a potential adoption family still provided the children with substantially more permanence and stability than they experienced in respondent-mother's care. Thus, we are not "left with a definite and firm conviction that a mistake has been made," see *In re HRC*, 286 Mich App at 459, in the trial court's findings and decision that termination of respondent-mother's parental rights was in the best interests of the children.

Affirmed.

/s/ Karen M. Fort Hood

/s/ Brock A. Swartzle

**STATE OF MICHIGAN
COURT OF APPEALS**

In re SMITH, Minors.

UNPUBLISHED

April 30, 2020

No. 351095; 351178
Kalamazoo Circuit Court
Family Division
LC No. 18-000053-NA

Before: RIORDAN, P.J., and FORT HOOD and SWARTZLE, JJ.

Riordan, P.J. (*dissenting*).

I respectfully dissent. Based on the reasoning articulated by the trial court in its orally issued opinion at the adjudication phase of this matter, there is insufficient evidence to support the trial court taking jurisdiction over the children.

At the adjudication phase, significant evidence was presented to the trial court about domestic violence, substance abuse, drug dealing, neglect, eviction, dishevelment, and other issues. However, the trial court looked beyond those behaviors and specifically found it was not against the law for a parent to drink one or two beers, argue with a spouse, be in the middle of an eviction process, or leave a 10-year-old at home alone. Although BS told the trial court that respondent-father had fallen asleep after drinking beer and left food cooking on the stove, the trial court noted that it was not clear whether respondent-mother had taken over the cooking at that point. Thus, the trial court concluded, this evidence was not a basis for the court to assume jurisdiction over BS and BS, Jr. Instead, the trial court based jurisdiction solely upon an allegation of educational neglect, which it characterized as child abuse.

MCL 712A.2 governs jurisdiction in child neglect proceedings, and provides that the trial court may exercise jurisdiction over a juvenile under 18 years of age whose parent “when able to do so, neglects or refuses to provide proper or necessary support, education . . . or other care necessary for his or her health or morals.” MCL 712A.2(b)(1). A child’s chronic absence from school is a sufficient basis for the trial court to assume jurisdiction on the ground of educational neglect as contemplated by the statute. See *In re Nash*, 165 Mich App 450, 455-456; 419 NW2d 1 (1987).

“We review the trial court’s decision to exercise jurisdiction for clear error in light of the court’s findings of fact.” *In re BZ*, 264 Mich App 286, 295; 690 NW2d 505 (2004). A decision

is “ ‘clearly erroneous’ if, although there is evidence to support it, we are left with a definite and firm conviction that a mistake has been made.” *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009). We review de novo the interpretation and application of statutes and court rules. *In re Sanders*, 495 Mich 394, 404; 852 NW2d 524 (2014).

“The question at adjudication is whether the trial court can exercise jurisdiction over the child (and the respondents-parents) under MCL 712A.2(b)” *In re Ferranti*, 504 Mich 1, 15; 934 NW2d 610 (2019) (parentheses in original). The trial court may exercise jurisdiction if the petitioner has demonstrated that one or more of the statutory grounds for jurisdiction were proven by a preponderance of the evidence based on the allegations in the petition. *Id.* Preponderance of the evidence means “such evidence as, when weighed with that opposed to it, has more convincing force and from which it results that the greater probability is in favor of the party upon whom the burden rests.” *Jones v E Mich Motorbuses*, 287 Mich 619, 642; 283 NW 710 (1939) (quotation marks and citation omitted).

The evidence presented at the adjudication phase shows that the children attended school about 75% of their total class time—slightly less than the school’s average attendance record of approximately 85%. There is no evidence in the record of harm to the children or poor progress at school. BS, Jr., was achieving at his grade level and was described by a teacher as “doing just fine” in school. The only evidence presented about BS’ school work was her absenteeism rate.

Of course, it would be ideal for all children to attend school without appearing disheveled, to always be punctual, and to have their parents take an active interest in homework assignments. However, I disagree with the trial court that the record here supports a finding “well beyond a preponderance of the evidence that the children have not regularly attended school and are often late.” The evidence shows that BS, Jr., performs at the appropriate education grade level and there is no documentation or indication in the record that the child is falling behind, only a possibility that it could happen in the future. One teacher testified that BS, Jr. missed some assessments of reading, spelling, and math skills because of absences and did not turn in some homework assignments. However, these things alone do not amount to a preponderance of the evidence of educational neglect rising to the level of child abuse. Instead, it may be more reflective of the educational condition of a great many school-age children. Further, there is no evidence in the record as to the educational progress of BS other than her school attendance rate.

A review of the evidence does not result in the greater probability in favor of the petitioner in this case. *Jones*, 287 Mich at 642. Ideally, every child should have perfect school attendance, but I cannot conclude that a 75% average absenteeism rate is a convincing force of there being educational neglect that is on the level of child abuse. *Id.*

As educational neglect was not proven by a preponderance of the evidence, I am left with a definite and firm conviction that a mistake has been made. *In re HRC*, 286 Mich App at 459. The trial court committed clear error by asserting jurisdiction solely on the basis of educational neglect over the children in these matters. Thus, I would reverse the trial court’s order terminating the respondents’ parental rights and remand for further proceedings.

/s/ Michael J. Riordan